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December 2, 2016

Net Shapes, Inc. Attn: Patricia Schwent, Controller 1705 S Baker Ave Ontario, CA 91761	Net Shapes, Inc. c/o Joseph S. Cannone Agent for Service of Process 1336 E Francis St Ontario, CA 91761
Net Shapes, Inc. Attn: Patricia Schwent, Controller 1336 E Francis St Ontario, CA 91761	
Gina McCarthy, Administrator U.S. Environmental Protection Agency Mail Code: 1101A 1200 Pennsylvania Avenue, N.W. Washington, DC 20460	Kurt V. Berchtold, Executive Officer Regional Water Quality Control Board Santa Ana Region 3737 Main Street, Suite 500 Riverside, CA 92501-3348
Jared Blumenfeld, Regional Administrator U.S. EPA, Region 9 75 Hawthorne Street San Francisco, CA 94105	Thomas Howard, Executive Director State Water Resources Control Board 1001 I Street Sacramento, CA 95814

Re: Notice of Violation and Intent to File Suit under the Clean Water Act

To Whom It May Concern:

Brodsky & Smith, LLC ("Brodsky & Smith") represents **Personal Privacy** a citizen of the State of California. This letter is to give notice that Brodsky & Smith, on **Pers** behalf, intends to file a civil action against Net Shapes, Inc. ("Net Shapes") for violations of the Federal Water Pollution Control Act, 33 U.S.C. § 1251 *et seq.* ("Clean Water Act" or "CWA") at Net Shapes' facility located at 1705 S Baker Ave, Ontario, CA 91761 (the "Facility").

Perso a citizen of the State of California who is concerned with the environmental health of the Cucamonga Creek, and uses and enjoys the waters of the Cucamonga Creek, its inflows, and other areas of the overall Santa Ana River Watershed, of which Cucamonga Creek is a Tributary. **Pers** use and enjoyment of these waters are negatively affected by the pollution caused by Net Shapes' operations. Additionally, **Pers** acts in the interest of the general public to prevent pollution in these waterways, for the benefit of their ecosystems, and for the benefits of all individuals and communities who use these waterways for various recreational, educational, and spiritual purposes.

This letter addresses Net Shapes' unlawful discharge of pollutants from the Facility via indirect flow into the Cucamonga Creek.¹ Specifically, investigation of the Facility has uncovered significant, ongoing, and continuous violations of the CWA and the National Pollutant Discharge Elimination System ("NPDES") General Permit No. CAS000001 [State Water Resources Control Board] Water Quality Orders No. 2014-0057-DWQ (the "Industrial Stormwater Permit") and 92-12-DWQ (as amended by Order No. 97-03-DWQ) (the "Previous Industrial Stormwater Permit").²

CWA section 505(b) requires that sixty (60) days prior to the initiation of a civil action under CWA section 505(a), a citizen must give notice of his or her intent to file suit. 33 U.S.C. § 1365(b). Notice must be given to the alleged violator, the U.S. Environmental Protection Agency ("EPA"), and the State in which the violations occur. As required by section 505(b), this Notice of Violation and Intent to File Suit provides notice to Net Shapes of the violations that have occurred and which continue to occur at the Facility. After the expiration of sixty (60) days from the date of this Notice of Violation and the Intent to File Suit, Pers intends to file suit in federal court against Net Shapes under CWA section 505(a) for the violations described more fully below.

During the 60-day notice period, Pers is willing to discuss effective remedies for the violations noticed in this letter. We suggest that Net Shapes contact Pers' attorneys at Brodsky & Smith within the next twenty (20) days so that these discussions may be completed by the conclusion of the 60-day notice period. Please note that we do not intend to delay the filing of a complaint in federal court, and service of the complaint shortly thereafter, even if discussions are continuing when the notice period ends.

I. THE LOCATION OF THE ALLEGED VIOLATIONS

A. The Facility

Net Shapes' Facility is located at 1705 S Baker Ave, Ontario, California. At the Facility, Net Shapes operates as an investment casting foundry. At the Facility, the following industrial activities occur: (i) the production of investment castings.³ Other activities carried out in the regular course of business at the facility include storage of fuel and other oils, maintenance, equipment storage, and waste storage. Repair and maintenance activities carried out at the facility include, but are not limited to, electrical, plumbing, roofing, asphalt, concrete, and utilities repairs as well as janitorial duties. Possible pollutants from the Facility include total suspended solids ("TSS"), waste oils, lubricants, fuel, trash, debris, hazardous materials, chemical oxygen demand ("COD"), oil and grease, pH, Nitrate plus Nitrite Nitrogen, heavy metals, such as Aluminum, Copper, Iron, and Zinc, and other pollutants. Stormwater from the Facility discharges, indirectly, into the Cucamonga Creek.

¹ Net Shapes' Notice of Intent ("NOI") filed with the Santa Ana Regional Water Quality Control Board ("SARWQCB") lists the receiving waters of the Facility as the Cucamonga Creek. Upon investigation, it is Perso knowledge and belief that the Facility lies within the watershed of the Santa Ana River, and that the receiving water of the Facility's stormwater runoff is the Cucamonga Creek, Reach 1 via indirect flow.

² On April 1, 2014, the State Water Resources Control Board adopted an updated NPDES General Permit for Discharges Associated with Industrial Activity, Water Quality Order No. 2014-57-DWQ, which has taken force or effect on its effective date of July 1, 2015. As of the effective date, Water Quality Order No. 2014-57-DWQ has superseded and rescinded the prior Industrial Stormwater Permit except for purposes of enforcement actions brought pursuant to the prior permit.

³ As described in more detail below, and to Pers' knowledge and belief, Net Shapes has submitted an insufficient Storm Water Pollution Prevention Plan ("SWPPP") to the SARWQCB consisting of a form SWPPP with handwritten annotations, that does not fully describe the industrial processes and potential pollutants associated with them as required by the Industrial Stormwater Permit.

B. The Affected Water

The Cucamonga Creek and overall Santa Ana River Watershed are waters of the United States. The CWA requires that water bodies such as the Cucamonga Creek, and overall Santa Ana River Watershed meet water quality objectives that protect specific "beneficial uses." The beneficial uses of the Cucamonga Creek and overall Santa Ana River Watershed include commercial and sport fishing, estuarine habitat, fish migration, navigation, preservation of rare and endangered species, water contact and non-contact recreation, shellfish harvesting, fish spawning, and wildlife habitat. Contaminated stormwater from the Facility adversely affects the water quality of the Cucamonga Creek and overall Santa Ana River Watershed, and threatens the beneficial uses and ecosystem of these watersheds, which includes habitats for threatened and endangered species.

II. THE FACILITY'S VIOLATIONS OF THE CLEAN WATER ACT

It is unlawful to discharge pollutants to waters of the United States, such as the Cucamonga Creek, without an NPDES permit or in violation of the terms and conditions of an NPDES permit. CWA § 301(a), 33 U.S.C. § 1311(a); *see also* CWA § 402(p), 33 U.S.C. § 1342(p) (requiring NPDES permit issuance for the discharge of stormwater associated with industrial activities). The Industrial Stormwater Permit authorizes certain discharges of stormwater, conditioned on compliance with its terms.

Net Shapes has submitted a Notice of Intent ("NOI") to be authorized to discharge stormwater from the Facility under the Industrial Stormwater Permit since at least 2013. However, information available to **Perso** indicates that stormwater discharges from the Facility have violated several terms of the Industrial Stormwater Permit and the CWA. Apart from discharges that comply with the Industrial Stormwater Permit, the Facility lacks NPDES permit authorization for any other discharges of pollutants into waters of the United States.

A. Discharges in Excess of BAT/BCT Levels

The Effluent Limitations of the Industrial Stormwater Permit prohibit the discharge of pollutants from the facility in concentrations above the level commensurate with the application of best available technology economically achievable ("BAT") for toxic pollutants⁴ and best conventional pollutant control technology ("BCT") for conventional pollutants.⁵ Industrial Stormwater Permit § I(D)(32), II(D)(2); Previous Industrial Stormwater Permit, Order Part B(3). The EPA has published Benchmark values set at the maximum pollutant concentration present if an industrial facility is employing BAT and BCT, as listed in Attachment 1 to this letter.⁶

Additionally, the Previous Industrial Stormwater Permit notes that effluent limitation guidelines for several named industrial categories have been established and codified by the Federal Government. *See* Previous Industrial Stormwater Permit pp. VIII. The Previous Industrial Stormwater Permit mandates that for facilities that fall within such industrial categories, compliance with the listed BAT and BCT for the specified pollutants listed therein must be met in order to be in compliance with the Previous Industrial Stormwater Permit. *Id.* Net Shapes falls within these named industrial categories and it must have complied with the effluent limitations found therein in order to have been in compliance with the Previous

⁴ BAT is defined at 40 C.F.R. § 437.1 *et seq.* Toxic pollutants are listed at 40 C.F.R. § 401.15 and include copper, lead, and zinc, among others.

⁵ BCT is defined at 40 C.F.R. § 437.1 *et seq.* Conventional pollutants are listed at 40 C.F.R. § 401.16 and include BOD, TSS, oil and grease, pH, and fecal coliform.

⁶ The Benchmark values are part of the EPA's Multi-Sector General Permit ("MSGP") and can be found at: http://www.epa.gov/npdes/pubs/msgp2008_finalpermit.pdf. *See* 73 Fed. Reg. 56, 572 (Sept. 29, 2008) (Final National Pollutant Discharge Elimination System (NPDES) General Permit for Stormwater Discharges From Industrial Activities).

Industrial Stormwater Permit during its effective period. In addition, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". See Industrial Stormwater Permit § I(D)(33). The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Notably, Net Shapes, is classified as falling under SIC Code 3324, relating to Steel Investment Foundries, requiring it to be within numerical effluent limitations for (i) Total Aluminum; (ii) Total Suspended Solids ("TSS"); (iii) Total Copper; (iv) Total Iron; and (v) Total Zinc. Based on Net Shapes' self-reporting data and/or lack thereof, Net Shapes has not met this requirement and was in violation of the Previous Stormwater Permit over a period of approximately four (4) years.

Net Shapes' self-reporting of industrial stormwater discharges shows a pattern of exceedances of Benchmark values and/or a complete failure to adequately report numerical pollutant discharge values in every instance of self-reporting. See Attachment 2. This pattern of exceedances of benchmark values and/or lack of self-reporting indicate that Net Shapes has failed and is failing to employ measures that constitute BAT and BCT in violation of the requirements of the Industrial Stormwater Permit and Previous Industrial Stormwater Permit. Pers alleges and notifies Net Shapes that its stormwater discharges from the Facility have consistently contained and continue to contain levels of pollutants that exceed Benchmark Values for Aluminum, Iron, Copper, and/or Zinc in the Annual Reporting Periods of 2015-2016, 2014-2015, and 2013-2014.

Net Shapes' ongoing discharges of stormwater containing levels of pollutants above EPA Benchmark values and BAT and BCT based levels of control also demonstrate that Net Shapes has not developed and implemented sufficient Best Management Practices ("BMPs") at the Facility. Proper BMPs could include, but are not limited to, moving certain pollution-generating activities under cover or indoors capturing and effectively filtering or otherwise treating all stormwater prior to discharge, frequent sweeping to reduce build-up of pollutants on-site, installing filters on downspouts and storm drains, and other similar measures.

Net Shapes' failure to develop and/or implement adequate pollution controls to meet BAT and BCT and the Facility violates and will continue to violate the CWA and the Industrial Stormwater Permit each and every day Net Shapes' discharges stormwater without meeting BAT/BCT. Pers alleges that Net Shapes has discharged stormwater containing excessive levels of pollutants from the Facility to the Cucamonga Creek during at least every significant local rain event over 0.2 inches in the last four (4) years.⁷ Attachment 3 compiles all dates in the last four (4) years when a significant rain event occurred. Net Shapes is subject to civil penalties for each violation of the Industrial Stormwater Permit and the CWA within the past four (4) years.

B. Discharges Impairing Receiving Waters

The Industrial Stormwater Permit's Discharge Prohibitions disallow stormwater discharges that cause or threaten to cause pollution, contamination, or nuisance. See Industrial Stormwater Permit § III; Previous Industrial Stormwater Permit, Order Part A(2). The Industrial Stormwater Permit also prohibits stormwater discharges to surface or groundwater that adversely impact human health or the environment. See Industrial Stormwater Permit § VI(b)-(c); Previous Industrial Stormwater Permit, Order Part C(1). Receiving Water Limitations of the Industrial Stormwater Permit prohibit stormwater discharges that cause or contribute to an exceedance of applicable Water Quality Standards ("WQS") contained in a Statewide Water Quality Control Plan or the applicable Regional Water Board's Basin Plan. See Industrial Stormwater Permit § VI(a); Previous Industrial Stormwater Permit at Order Part C(2). Applicable WQS are set forth in the California Toxic Rule ("CTR")⁸ and the Santa Ana River Basin Water Quality Control

⁷ Significant local rain events are reflected in the rain gauge data available at: <http://www.ncdc.noaa.gov/cdo-web/search>.

⁸ The CTR is set forth at 40 C.F.R. § 131.38 and is explained in the Federal Register preamble accompanying the CTR promulgation set forth at 65 Fed. Reg. 31, 682 (May 18, 2000).

Plan (the "Basin Plan").⁹ See Attachment 1. Exceedances of WQS are violations of the Industrial Stormwater Permit, the CTR, and the Basin Plan.

The Basin Plan establishes Beneficial Uses for various areas of the Santa Ana River Basin, into which Stormwater discharges from the facility are likely to flow.¹⁰ Water quality standards are pollutant concentration levels determined by the state or federal agencies to be protective of designated Beneficial Uses. Discharges above water quality standards contribute to impairment of Receiving Waters' Beneficial Uses. Applicable water quality standards include, among others, the CTR, and water quality objectives in the Basin Plan. Industrial stormwater discharges must strictly comply with water quality standards, including those criteria listed in the applicable basin plan. See *Defenders of Wildlife v. Browner*, 191 F.3d 1159, 1166-67 (9th Cir. 1999).

The Basin Plan establishes WQS for various areas of the Santa Ana River Basin, including all inland surface waters and the Cucamonga Creek into which Stormwater discharges from the facility flow, including the following:

- That "[t]he pH of inland surface waters shall not be raised above 8.5 or depressed below 6.5 as a result of controllable water quality factors." See Basin Plan, 4-18.
- That "[w]aste discharges shall not result in increases in COD levels in inland surface waters which exceed the values shown in Table 4-1 or which adversely affect beneficial uses." See Basin Plan, 4-9.
- That "Inland surface waters shall not contain suspended or settleable solids in amounts which cause a nuisance or adversely affect beneficial uses as a result of controllable water quality factors." See Basin Plan, 4-19.
- That "[t]he concentrations of toxic pollutants in the water column, sediments or biota shall not adversely affect beneficial uses." See Basin Plan, 4-20.

Pers alleges that Net Shapes' stormwater discharges have caused or contributed to exceedances of Receiving Water Limitations in the Industrial Stormwater Permit and the WQS set forth in the Basin Plan and CTR. These allegations are based on Net Shapes' self-reported data, or lack thereof, submitted to the Santa Ana Regional Water Quality Control Board. These sampling results, or lack thereof, indicate that Net Shapes' discharges are causing or threatening to cause pollution, contamination, and/or nuisance; adversely impacting human health or the environment; and violating applicable WQS. See Attachment 2.

Pers alleges that each day that Net Shapes has discharged stormwater from the Facility, Net Shapes' stormwater has and/or may have contained levels of pollutants that exceeded one or more of the Receiving Water Limitations and/or applicable WQS in the Santa Ana River. Pers alleges that Net Shapes has discharged stormwater exceeding Receiving Water Limitations and/or WQS from the Facility to the Cucamonga Creek during at least every significant local rain event over 0.2 inches in the last four (4) years. See Attachment 3. Each discharge from the Facility that violates a Receiving Water Limitation or has caused or contributed, or caused or contributes, to an exceedance of an applicable WQS constitutes a

⁹ The Basin Plan is published by the Santa Ana Regional Water Quality Control Board at: http://www.waterboards.ca.gov/santaana/water_issues/programs/basin_plan/index.shtml.

¹⁰ The Basin Plan identifies the Beneficial Uses of the Cucamonga Creek Reach 1, which is the most immediate receiving water to the Facility's stormwater runoff, and the Mill Creek, Chino Creek Reach 1A, Santa Ana River Reach 2, Santa Ana River Reach 1, the Tidal Prism of the Santa Ana River and the Pacific Ocean, into which the Facility's stormwater flows downstream into, as the following: Water Contact Recreation; Non-contact Water Recreation; Agricultural Supply, Municipal and Domestic Supply; Groundwater Recharge; Warm Freshwater Habitat; Wildlife Habitat; Rare, Threatened or Endangered Species; and Spawning, Reproduction and Development. See Basin Plan at Table 3-1.

separate violation of the Industrial Stormwater Permit and the CWA Net Shapes is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA within the past four (4) years.

C. Failure to Develop and Implement an Adequate Stormwater Pollution Prevention Plan

The Industrial Stormwater Permit requires dischargers to develop and implement an adequate Storm Water Pollution Prevention Plan ("SWPPP"). *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit § A(1)(a). The Industrial Stormwater Permit also requires dischargers to make all necessary revisions to existing SWPPPs promptly. *See* Industrial Stormwater Permit, § X(B); Previous Industrial Stormwater Permit at Order Part E(2).

The SWPPP must include, among other requirements, the following: a site map, a list of significant materials handled and stored at the site, a description and assessment of all Net Shapes pollutant sources, a description of the BMPs that will reduce or prevent pollutants in stormwater discharges, specification of BMPs designed to reduce pollutant discharge to BAT and BCT levels, a comprehensive site compliance evaluation completed each reporting year, and revisions to the SWPPP within 90 days after a facility manager determines that the SWPPP is in violation of any requirements of the Industrial Stormwater Permit. *See* Industrial Stormwater Permit, § X(A); Previous Industrial Stormwater Permit Section § A.

Based on information available to Pers Net Shapes has failed to prepare and/or implement an adequate SWPPP and/or failed to revise the SWPPP to satisfy each of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit. For Example, Net Shapes' SWPPP does not include and/or Net Shapes has not implemented adequate BMPs designed to reduce pollutant levels in discharges to BAT and BCT levels in accordance with Section A(8) of the Industrial Stormwater Permit, as evidenced by the data in Attachment 2.

Accordingly, Net Shapes has violated the CWA each and every day that it has failed to develop and/or implement an adequate SWPPP meeting all of the requirements of § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit, and Net Shapes will continue to be in violation every day until it develops and implements an adequate SWPPP. Net Shapes is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring within the past four (4) years.

D. Failure to Develop and Implement an Adequate Monitoring and Reporting Program and to Perform Annual Comprehensive Site Compliance Evaluations

The Industrial Stormwater Permit requires facility operators to develop and implement a Monitoring and Reporting Program ("MRP"). *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § B(1) and Order Part E(3). The Industrial Stormwater Permit requires that MRP ensure that each the facility's stormwater discharges comply with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations specified in the Industrial Stormwater Permit. *Id.* Facility operators must ensure that their MRP practices reduce or prevent pollutants in stormwater and authorized non-stormwater discharges as well as evaluate and revise their practices to meet changing conditions at the facility. *Id.* This may include revising the SWPPP as required by § X(A) of the Industrial Stormwater Permit and/or § A Previous Industrial Stormwater Permit.

The MRP must measure the effectiveness of BMPs used to prevent or reduce pollutants in stormwater and authorized non-stormwater discharges, and facility operators must revise the MRP whenever appropriate. *See* Industrial Stormwater Permit, § XI; Previous Industrial Stormwater Permit § at Section B. The Industrial Stormwater Permit requires facility operators to visually observe and collect samples of stormwater discharges from all drainage areas. *Id.* Facility operators are also required to provide an explanation of monitoring methods describing how the facility's monitoring program will satisfy these objectives. *Id.*

Net Shapes has been operating the Facility with an inadequately developed and/or inadequately implemented MRP, in violation of the substantive and procedural requirements set forth in Section B of the Industrial Stormwater permit. For example, the data in Attachment 2 indicates that Net Shapes' monitoring program has not ensured that stormwater dischargers are in compliance with the Discharge Prohibitions, Effluent Limitations, and Receiving Water Limitations of the Industrial Stormwater Permit as required by the Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. The monitoring has not resulted in practices at the Facility that adequately reduce or prevent pollutants in stormwater as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B. Additionally, the Industrial Stormwater Permit requires dischargers to comply with Effluent Limitations "consistent with U.S. EPA's 2008 Multi Sector General Permit for Stormwater Discharges Associated with Industrial Activity (the "2008 MSGP")". The 2008 MSGP has specific numeric effluent limitations based upon Standard Industrial Classification ("SIC") codes. Notably, Net Shapes, is classified as falling under SIC Code 3324, relating to Steel Investment Foundries, requiring it to be within numerical effluent limitations for (i) Total Aluminum; (ii) Total Suspended Solids ("TSS"); (iii) Total Copper; (iv) Total Iron; and (v) Total Zinc. As previously stated, and in clear violation of the terms of the Industrial Stormwater Permit, Net Shapes has reported exceedances or failed to report testing results for any applicable effluent limitation in any of their annual reports for the past four (4) annual reporting periods. *See* Attachments 2, 3. Therefore, the data in Attachment 2 indicates that Net Shapes' monitoring program has not effectively identified or responded to compliance problems at the Facility or resulted in effective revision of the BMPs in use or the Facility's SWPPP to address such ongoing problems as required by Industrial Stormwater Permit, § XI and/or the Previous Industrial Stormwater Permit § B.

As a part of the MRP, the Industrial Stormwater Permit specifies that Facility operators shall collect a total of four (4) stormwater samples throughout an annual reporting period. Specifically the Industrial Stormwater Permit requires, "The discharger to collect and analyze samples from two (2) Qualifying Storm Events ('QSE's) within the first half of each reporting year (July 1 to December 31), and two (2) QSEs within the second half of each reporting year (January 1 to June 30)." Industrial Stormwater Permit § XI B(2).¹¹ Furthermore, should facility operators fail to collect samples from the first storm event of the wet season, they are still required to collect samples from two other storm events during the wet season, and explain in the annual report why the first storm event was not sampled. *Id.* Despite this requirement Net Shapes has submitted the annual report for the 2015-2016 reporting period with testing data from only three (3) QSEs, and submitted the annual report for the 2013-2014 reporting period with testing data from only one (1) QSE. Additionally, Net Shapes has failed to adequately explain why such sampling was not included.

The Industrial Stormwater Permit also requires dischargers to include laboratory reports with their Annual Reports submitted to the Regional Board. *See* Industrial Stormwater Permit, Fact Sheet § O and/or Previous Industrial Stormwater Permit § B(14). Notably, Net Shapes' has not submitted any laboratory reports with testing data for a fourth QSE in the 2015-2016 year, or a second QSE in the 2013-2014 year as required by the Industrial Stormwater Permit and Previous Industrial Stormwater Permit, respectively. Net Shapes has failed to adequately explain why such sampling was not included. Additionally, the Laboratory Reports and Annual Report for the 2015-2016 reporting year contain several chain-of-custody issues. For instance, upon a viewing of the three Laboratory Reports and Annual Report in 2015-2016, it is impossible to determine when the samples underlying two of the Laboratory Reports were taken, or where the sample underlying one of the Laboratory Results was taken from. Net Shapes has failed to adequately explain these discrepancies in the Laboratory Reports for the 2015-2016 reporting year.

As a result of Net Shapes' failure to adequately develop and/or implement an adequate MRP at the Facility, Net Shapes has been in daily and continuous violation of the Industrial Stormwater Permit and the CWA each and every day for the past four (4) years. These violations are ongoing. Net Shapes will continue to be in violation of the monitoring and reporting requirement each day that Net Shapes fails to

¹¹ Under the Previous Industrial Stormwater Permit, only two samplings per year was required, specifically, from "the first hour of discharge from (1) the first storm event of the wet season, and (2) at least one other storm event in the wet season." *See* Previous Industrial Stormwater Permit § B(5)(a).

adequately develop and/or implement an effective MRP at the Facility. Net Shapes is subject to penalties for each violation of the Industrial Stormwater Permit and the CWA occurring for the last four (4) years.

E. Unpermitted Discharges

Section 301(a) of the CWA prohibits the discharge of any pollutant into waters of the United States unless the discharge is authorized by a NPDES Permit issued pursuant to Section 402 of the CWA. *See* 33 U.S.C. §§ 1311(a), 1342. Net Shapes sought coverage for the Facility under the Industrial Stormwater Permit, which states that any discharge from an industrial facility not in compliance with the Industrial Stormwater Permit "must be either eliminated or permitted by a separate NPDES permit." Industrial Stormwater Permit, § III; Previous Industrial Stormwater Permit, Order Part A(1). Because Net Shapes has not obtained coverage under a separate NPDES permit and has failed to eliminate discharges not permitted by the Industrial Stormwater Permit, each and every discharge from the Facility described herein not in compliance with the Industrial Stormwater Permit has constituted and will continue to constitute a discharge without CWA Permit coverage in violation of section 301(a) of the CWA, 33 U.S.C. § 1311(a)

IV. PERSON RESPONSIBLE FOR THE VIOLATIONS

Net Shapes, Inc. is the person responsible of the violations at the Facility described above.

V. NAME AND ADDRESS OF NOTICING PARTY

Personal
Privacy
Moreno Valley, CA 92553
Personal

VI. COUNSEL

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VII. REMEDIES

Pers intends, at the close of the 60-day notice period or thereafter, to file a citizen suit under CWA section 505(a) against Net Shapes for the above-referenced violations. Pers will seek declaratory and injunctive relief to prevent further CWA violations pursuant to CWA sections 505(a) and (d), 33 U.S.C. § 1365(a) and (d), and such other relief as permitted by law. In addition, Pers will seek civil penalties pursuant to CWA section 309(d), 33 U.S.C. § 1319(d), and 40 C.F.R. § 19.4, against Net Shapes in this action. The CWA imposes civil penalty liability of up to \$37,500 per day per violation for violations occurring after January 12, 2009. 33 U.S.C. § 1319(d); 40 C.F.R. § 19.4. Perso will seek to recover attorneys' fees, experts' fees, and costs in accordance with CWA section 505(d), 33 U.S.C. § 1365(d).

As noted above, **Pers** and her Counsel are willing to meet with you during the 60-day notice period to discuss effective remedies for the violations noted in this letter. Please contact me to initiate these discussions.

Sincerely,

A handwritten signature in blue ink, appearing to be 'EJ Smith', written over a horizontal line.

Evan J. Smith, Esquire
esmith@brodskysmith.com

Ryan P. Cardona, Esq.
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**ATTACHMENT 1: EPA BENCHMARKS AND WATER QUALITY STANDARDS FOR
DISCHARGES TO FRESHWATER**

A. EPA Benchmarks, 2008 Multi-Sector General Permit ("MSGP")

Parameter	Units	Benchmark Value	Source
Total Aluminum	Mg/L	0.75	2008 MSGP
Total Suspended Solids (TSS)	Mg/L	100	2008 MSGP
Total Copper	Mg/L	0.0038-0.0332*	2008 MSGP
Total Iron	Mg/L	1.0	2008 MSGP
Total Zinc	Mg/L	0.04-0.26*	2008 MSGP

* Dependent on Freshwater Hardness Levels

**B. Water Quality Standards – Discharge Limitations and Monitoring Requirements
(40 CFR Part 131.38 (California Toxics Rule or CTR), May 18, 2000)**

Parameter	Units	Water Quality Objectives		Source
		4- Day Average	1-Hr Average	
Lead	Mg/L	0.0081	0.21	40 CFR Part 131.38
Zinc	Mg/L	0.081	0.090	40 CFR Part 131.38

**ATTACHMENT 2: TABLE OF EXCEEDENCES FOR
NET SHAPES, INC.**

The following table contains each stormwater sampling result which exceeds EPA Benchmarks and/or causes or contributes to an exceedance of CFR and/or Basin Plan Water Quality Standards. All EPA Benchmarks and CFR and/or Basin Plan Water Quality Standards are listed in Attachment 1. All stormwater samples were reported by the Facility during the past four (4) years.

Reporting Period	Sample Date	Parameter	Result	Unit
2015-2016	UNKNOWN	Aluminum	0.802	Mg/L
2015-2016	UNKNOWN	Copper	0.035	Mg/L
2015-2016	UNKNOWN	Iron	1.229	Mg/L
2014-2015	12/12/2014	Aluminum	1.860	Mg/L
2014-2015	12/12/2014	Zinc	0.271	Mg/L
2013-2014	02/28/2014	Aluminum	0.921	Mg/L
2013-2014	02/28/2014	Zinc	0.330	Mg/L
2013-2014	02/28/2014	Iron	1.240	Mg/L

* Net Shapes' submitted 2015-2016 and 2013-2014 Annual Reports contains test results of required effluent limitations for only three (3) and one (1) QSEs, respectively, rather than the required four (4) QSEs or two (2) QSEs under the Industrial Stormwater Permit and/or Previous Industrial Stormwater Permit, as applicable.

* Net Shapes' submitted laboratory report reflecting pollutant effluent testing data for the 2015-2016 Annual Reporting period contains several chain-of-custody issues including, a lack of sampling date on two Laboratory Reports and a lack of sampling location on one Laboratory Report.

**ATTACHMENT 3: ALLEGED DATES OF EXCEEDANCES BY
NET SHAPES, INC.**

January 1, 2013 – November 28, 2016

Days with precipitation two-tenths of an inch or greater, as reported by NOAA's National Climatic Data Center, Station: Ontario International Airport, CA US, GHCND:USW00003102 when a stormwater discharge from the Facility is likely to have occurred. <http://www.ncdc.noaa.gov/cdo-web/search>

2013	2014	2015	2016
1/24	2/27	1/11	1/5
1/25	2/28	1/26	1/6
2/8	3/1	2/22	1/7
2/19	4/25	2/23	1/31
3/8	11/1	2/28	2/17
5/6	11/30	4/25	3/6
11/21	12/2	5/7	3/7
12/19	12/3	5/14	3/11
	12/12	7/18	5/6
	12/17	7/19	10/23
		9/9	10/24
		9/15	11/20
		10/5	11/21
		11/3	11/26
		12/13	
		12/22	